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DEPARTMENT OF COMMERCE
Bureau of Export Administration
15 CFR parts 734, 738, 740, 742, 743, 748, and 774
Docket No. 020228044-2044-01
RIN 0694-AC42

Implementation of the Wassenaar Arrangement List of Dual-Use Items Revisions: Computers;
and Revisions to License Exception CTP.

AGENCY: Bureau of Export Administration, Commerce

ACTION: Final rule.

SUMMARY: The Bureau of Export Administration (BXA) maintains the Commerce Control List (CCL), which identifies those items subject to Department of Commerce export licensing requirements based on their characteristics. Certain entries on the CCL implement multilateral national security controls established by the Wassenaar Arrangement on Export controls for Conventional Arms and Dual-Use Goods (the Wassenaar Arrangement), of which the United States is a founding member. The Wassenaar Arrangement controls strategic items with the objective of improving regional and international security and stability.

In this regard, on December 1, 2000, the Wassenaar Arrangement agreed to implement several changes in its List of Dual-Use Goods and Technologies. This final rule revises the CCL to implement certain agreed changes in Category 4 (Computers) of the Wassenaar List of Dual-Use Goods and Technologies, specifically in the area of computers. These changes are being implemented to reflect rapid technological advances and effective control factors. Additional changes in other categories of the Wassenaar Dual-Use List will be implemented in the CCL in a supplemental regulation.

In addition, this rule makes conforming and clarification revisions to License Exception CTP.

DATES: This rule is effective upon filing (March 5, 2002).

FOR FURTHER INFORMATION CONTACT: Tanya Hodge Mottley in the Office of Strategic Trade and Foreign Policy Controls, Bureau of Export Administration, at (202) 482-1837

SUPPLEMENTARY INFORMATION:

Background

In July 1996, the United States and thirty-two other countries gave final approval to the establishment of a new multilateral export control regime, called the Wassenaar Arrangement on Export Controls for Conventional Arms and Dual-Use Goods and Technologies (Wassenaar Arrangement). The Wassenaar Arrangement contributes to regional and international security and stability by promoting transparency and greater responsibility in transfers of conventional arms and dual-use goods and technologies, thus preventing destabilizing accumulations of such items. Participating states have committed to exchange information on exports of dual-use goods and technologies to non-participating states for the purposes of enhancing transparency and assisting in the development of a common understanding of the risks associated with the transfers of these items.

Implementation of Wassenaar Arrangement Agreement

This final rule revises certain national security control parameters for computers to implement recently agreed changes in Category 4 (Computers) of the Wassenaar List of Dual-Use Goods and Technologies. These changes are being implemented to reflect rapid technological advances and controllability factors.

A detailed description of the amendments to the Commerce Control List that are included in this rule is provided below.

Category 4 - Computers:

4A001 - Amended by:

- (1) Revising the License Requirement section to increase the XP control levels from 6,500 MTOPS to 28,000 MTOPS, consistent with the multilaterally agreed national security level; and
- (2) Correcting some typographical errors in the Related Control section.

4A002 - Amended by revising the License Requirement section to increase the XP control levels from 6,500 MTOPS to 28,000 MTOPS, consistent with the multilaterally agreed national security level.

4A003 - Amended by:

- (1) Revising the License Requirement section to increase the XP control levels from 6,500 MTOPS to 28,000 MTOPS, consistent with the multilaterally agreed national security level;
- (2) Removing License Exception LVS eligibility for paragraphs (b) and (c), as the need for LVS MTOPS limit has been surpassed by the new, higher control threshold and BXA has determined that an eligibility level above the new threshold is not warranted; and
- (3) Revising paragraph (b) in the List of Items Controlled to increase the national security (NS) control level for computers from 6,500 MTOPS to 28,000 MTOPS.

4D001 - Amended by revising the License Requirement section to increase the XP control levels from 6,500 MTOPS to 28,000 MTOPS, consistent with the multilaterally agreed national security level.

4D002 - Amended by:

- (1) Revising the License Requirement section to increase the XP control levels from 6,500 MTOPS to 28,000 MTOPS, consistent with the multilaterally agreed national security level; and
- (2) Correcting a citation reference in the XP reason for control paragraph.

4E001 - Amended by revising the License Requirement section to increase the XP control levels from 6,500 MTOPS to 28,000 MTOPS, consistent with the multilaterally agreed national security level.

This rule also revises other provisions of the EAR to ensure that all regulations reflect the changes made by Wassenaar Arrangement Agreement. This rule raises the CTP level for which Wassenaar reporting is required for computers exported to non-Wassenaar members under License Exception from 6,500 MTOPS to 75,000 MTOPS. Wassenaar reporting requirements are found in part 743 of the EAR. Reports for exports to Computer Tier 3 destinations of computers having a CTP level of greater than 85,000 MTOPS, should be reported under the post shipment verification reporting provisions of 742.12 and need not be reported under the Wassenaar reporting provisions in section 743.1 of the EAR.

This rule also raises the CTP limit from 33,000 MTOPS to 85,000 MTOPS of computers and electronic assemblies that are eligible for export or reexport under License Exception GOV to the International Atomic Energy Agency (IAEA) and the European Atomic Energy Community (Eurotom), and reexports by these organizations for official international safeguard use, as described in 740.11(a) of the EAR.

Finally, this rule raises the CTP limit from 33,000 MTOPS to 85,000 MTOPS of computers and electronic assemblies that are eligible for export or reexport under License Exception GOV for international inspections under the Chemical Weapons Convention, while adding a prohibition for access either physically or computationally by nationals of Cuba, Iran, Iraq, Libya, North Korea, Sudan, or Syria.

This rule also clarifies that the XP (high performance computer) reason for control in ECCNs 4A001, 4A002, 4A003, 4D001, 4D002, and 4E001, does not apply to Canada. In 1996, BXA published a regulation that restructured the entire Export Administration Regulations (61 FR 12714, March 25, 1996). Prior to the restructuring, §785.6 of the EAR stated that, “the general policy is to permit shipments of commodities and technical data to Canada for consumption or

use in that country without an export license.” Because XP is not a reason for control that is represented on the Commerce Country Chart created by the restructuring, and because the general policy statement for Canada was removed from the EAR during the restructuring, the EAR did not clearly state that a license is not required for items controlled under XP when destined to Canada. Therefore, this rule corrects this unintentional omission, by incorporating language into the CCL stating that XP does not apply to Canada.

This rule also corrects the license requirement for XP reasons, set forth in section 742.12(a)(1), to state that the XP license requirement does not apply when an item is eligible for export or reexport under any License Exception. This rule also clarifies, in section 742.12.(a)(1), that post-shipment verification reporting or Wassenaar reporting requirements may apply to certain exports or reexports of XP controlled items under License Exceptions.

Revisions to License Exception CTP

In addition, this rule clarifies License Exception CTP and removes some provisions that have been unintentionally retained in the EAR when BXA published the rule that implemented President Clinton’s January 10, 2001 announcement on computer revisions, on January 19, 2001 (66 FR 5443).

This rule makes the following specific amendments to License Exception CTP (§740.7 of the EAR):

- (1) Clarifies the scope of the License Exception, by adding language explaining that the scope not only covers computers and specially designed components therefor, but also includes electronic assemblies;
- (2) Moves the restrictions found in paragraph (a) “scope” to a new paragraph (b) “restrictions”;
- (3) Removes the reference to the national security control level for high performance computers (greater than 6,500 MTOPS) eligible under this License Exception for export or reexport to countries in Computer Tiers 1 or 3. This revision was added to this rule to clarify that computers having a CTP less than 28,000 MTOPS, that are controlled for parameters other than CTP, are eligible under this License Exception; and
- (4) Removing paragraphs (d)(4) and (d)(5), because NDAA notification requirements and post-shipment verification reporting requirements are no longer required for computers that are eligible for License Exception CTP. The regulation that was published on January 19, 2001 (66 FR 5443) established that NDAA notification and post-shipment requirements under License Exception CTP would end on March 20, 2001. However, provisions in §742.12(b)(3)(iv) of the EAR continue to require post-shipment verification reporting for licensed exports and reexports of computers above 85,000 MTOPS, and for licensed exports of items used to enhance previously exported or reexported computers, where the CTP is greater than 85,000 MTOPS.

In addition, this rule makes the following clarifications and corrections in other provisions of the EAR to ensure that all regulations reflect the changes made by the President's January 10, 2001 announcement.

(1) As the January 19, 2001 rule moved Hong Kong and South Korea to Computer Tier 1 with eligibility under License Exception CTP for computers with unlimited CTP, this rule removes footnote number 2 from the Commerce Country Chart (Supplement No. 1 to part 738), which imposed a license requirement for computers with a CTP greater than 45,000 MTOPS to Hong Kong and South Korea. The "X" in NS Column 2 for Hong Kong and South Korea only represented a license requirement for items under 4A001, 4A002, and 4A003 if the CTP was greater than 45,000 MTOPS, and did not apply for any other items subject to NS Column 2; therefore, the license requirement symbol "X" from NS Column 2 has been removed for these countries.

(2) This rule revises section 740.16(b)(1) to remove from License Exception APR the restriction on reexports of computers with a CTP greater than 45,000 MTOPS to Hong Kong and South Korea.

(3) This rule also raises the CTP limit from 28,000 MTOPS to 85,000 MTOPS for computers containing U.S.-origin controlled semiconductors (other than memory circuits) classified under ECCN 3A001 that are eligible for becoming "not subject to the EAR" under the de minimis procedures of 734.4 of the EAR when destined to Computer Tier 3, while keeping the limit at 28,000 MTOPS for computers containing U.S.-origin controlled semiconductors (other than memory circuits) classified under ECCN 3A001 or high speed interconnect devices (ECCN 4A994.j) when destined to Computer Tier 4 countries.

Although the Export Administration Act expired on August 20, 2001, Executive Order 13222 of August 17, 2001 (66 FR 44025, August 22, 2001) continues the Regulations in effect under the International Emergency Economic Powers Act.

Rulemaking Requirements

1. This final rule has been determined to be not significant for purposes of Executive Order 12866.

2. Notwithstanding any other provision of law, no person is required to respond to nor be subject to a penalty for failure to comply with a collection of information subject to the requirements of the Paperwork Reduction Act unless that collection of information displays a current valid OMB Control Number. This regulation involves collections previously approved by the Office of Management and Budget under control numbers 0694-0088, "Multi-Purpose Application," which carries a burden hour estimate of 45 minutes per manual submission and 40 minutes per electronic submission. Miscellaneous and recordkeeping activities account for 12 minutes per submission. Information is also collected under OMB control number

0694-0107, “National Defense Authorization Act,” Advance Notifications and Post-Shipment Verification Reports, which carries a burden hour estimate of 15 minutes per report. This rule also involves collections of information under OMB control number 0694-0073, “Export Controls of High Performance Computers” and OMB control number 0694-0093, “Import Certificates and End-User Certificates”.

3. This rule does not contain policies with Federalism implications as that term is defined in Executive Order 13132.

4. The provisions of the Administrative Procedure Act requiring notice of proposed rule making, the opportunity for public participation, and a delay in effective date, are inapplicable because this regulation involves a military or foreign affairs function of the United States (see 5 U.S.C. 553(a)(1)). Further, no other law requires that a notice of proposed rule making and an opportunity for public comment be given for this rule. Because a notice of proposed rule making and opportunities for public comment are not required to be given for this rule by 5 U.S.C. 553, or by any other law, the analytical requirements of the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, are inapplicable.

Therefore, this regulation is issued in final form. Although there is no formal comment period, public comments on this regulation are welcome on a continuing basis. Comments should be submitted to Office of Exporter Services, Bureau of Export Administration, Department of Commerce, P.O. Box 273, Washington, D.C. 20044.

List of Subjects

15 CFR Part 734

Administrative practice and procedure, Exports, Foreign trade.

15 CFR Parts 740, 743, and 748

Administrative practice and procedure, Exports, Foreign trade, Reporting and record keeping requirements.

15 CFR Parts 738 and 742

Exports, Foreign trade.

15 CFR Part 774

Exports, Foreign trade, Reporting and recordkeeping requirements.

Accordingly, parts 734, 738, 740, 742, 743, 748, and 774 of the Export Administration Regulations (15 CFR Parts 730-799) are amended as follows:

1. The authority citation for 15 CFR Part 734 is revised to read as follows:

Authority: 50 U.S.C. app. 2401 et seq.; 50 U.S.C. 1701 et seq.; E.O. 12938, 59 FR 59099, 3 CFR, 1994 Comp., p. 950; E.O. 13020, 61 FR 54079, 3 CFR, 1996 Comp. p. 219; E.O. 13026, 61 FR 58767, 3 CFR, 1996 Comp., p. 228; E.O. 13222, 66 FR 44025, August 22, 2001; Notice of November 9, 2001, 66 FR 56965, November 13, 2001.

2. The authority citation for 15 CFR part 738 is revised to read and the authority citation for 15 CFR part 774 continues to read as follows:

Authority: 50 U.S.C. app. 2401 et seq.; 50 U.S.C. 1701 et seq.; 10 U.S.C. 7420; 10 U.S.C. 7430(e); 18 U.S.C. 2510 et seq.; 22 U.S.C. 287c; 22 U.S.C. 3201 et seq.; 22 U.S.C. 6004; 30 U.S.C. 185(s), 185(u); 42 U.S.C. 2139a; 42 U.S.C. 6212; 43 U.S.C. 1354; 46 U.S.C. app. 466c; 50 U.S.C. app. 5; Sec. 901-911, Publ. L. 106-387; Sec. 221, Publ. L. 107-56; E.O. 13026, 61 FR 58767, 3 CFR, 1996 Comp., p. 228; E.O. 13222, 66 FR 44025, August 22, 2001.

3. The authority citation for 15 CFR part 740 is revised to read as follows:

Authority: 50 U.S.C. app. 2401 et seq.; 50 U.S.C. 1701 et seq.; Sec. 901-911, Publ. L. 106-387; E.O. 13026, 61 FR 58767, 3 CFR, 1996 Comp., p. 228; E.O. 13222, 66 FR 44025, August 22, 2001.

4. The authority citation for 15 CFR part 748 is revised to read as follows:

Authority: 50 U.S.C. app. 2401 et seq.; 50 U.S.C. 1701 et seq.; E.O. 13026, 61 FR 58767, 3 CFR, 1996 Comp., p. 228; E.O. 13222, 66 FR 44025, August 22, 2001.

5. The authority citation for 15 CFR Part 742 is revised to read as follows:

Authority: 50 U.S.C. app. 2401 et seq.; 50 U.S.C. 1701 et seq.; 18 U.S.C. 2510 et seq.; 22 U.S.C. 3201 et seq.; 42 U.S.C. 2139a; Sec. 901-911, Publ. L. 106-387; Sec. 221, Publ. L. 107-56; E.O. 12058, 43 FR 20947, 3 CFR, 1978 Comp., p. 179; E.O. 12851, 58 FR 33181, 3 CFR, 1993 Comp., p. 608; E.O. 12938, 59 FR 59099, 3 CFR, 1994 Comp., p. 950; E.O. 13026, 61 FR 58767, 3 CFR, 1996 Comp., p. 228; E.O. 13222, 66 FR 44025, August 22, 2001; Notice of November 9, 2001, 66 FR 56965, November 13, 2001.

6. The authority citation for 15 CFR part 743 continues to read as follows:

Authority: 50 U.S.C. app. 2401 et seq.; Pub.L. 106-508; 50 U.S.C. 1701 et seq.; E.O. 13206, 66 FR 18397, April 9, 2001.

PART 734 - [AMENDED]

7. Part 734 is amended by revising paragraph 734.4(a), to read as follows:

§734.4 De Minimis U.S. Content.

(a) There is no de minimis level for the export from a foreign country of a foreign-made computer exceeding 85,000 MTOPS containing U.S.-origin controlled semiconductors (other than memory circuits) classified under ECCN 3A001 to Computer Tier 3; or exceeding 28,000 MTOPS containing U.S.-origin controlled semiconductors (other than memory circuits) classified under ECCN 3A001 or high speed interconnect devices (ECCN 4A994.j) to Computer Tier 4 countries described in §742.12 of the EAR.

PART 738 - [AMENDED]

8. Supplement No. 1 to part 738 is amended by:

(a) Removing the license symbol “X” and the reference to footnote 2 in NS Column 2 for Hong Kong and South Korea; and

(b) Removing footnote 2.

PART 740 - [AMENDED]

9. Part 740 is amended by:

(a) Revising 740.7, 740.11(c)(2)(i), and 740.16(b); and

(b) Revising the number “45,000” to read “85,000” in 740.11(a)(2)(ii), 740.11(a)(2)(iii), Supplement No. 1 to part 740.11 paragraphs (a)(1)(ii), (a)(1)(iii), (b)(1)(ii), and (b)(1)(iii), to read as follows:

§740.7 COMPUTERS (CTP).

(a) Scope. License Exception CTP authorizes exports and reexports of computers, including “electronic assemblies” and specially designed components therefor controlled by ECCN 4A003, exported or reexported separately or as part of a system for consumption in Computer Tier countries as provided by this section. When evaluating your computer to determine License Exception CTP eligibility, use the CTP parameter to the exclusion of other technical parameters

for computers classified under ECCN 4A003.a or .b, and “electronic assemblies” under ECCN 4A003.c, except for parameters specified as Missile Technology (MT) concerns or 4A003.e (equipment performing analog-to-digital conversions exceeding the limits in ECCN 3A001.a.5.a).

(b) Restrictions. (1) Related equipment controlled under 4A003.d and .g may not be exported or reexported under this License Exception when exported or reexported separately from eligible computers authorized under this License Exception.

(2) Computers eligible for License Exception CTP may not be accessed either physically or computationally by nationals of Cuba, Iran, Iraq, Libya, North Korea, Sudan, or Syria, except that commercial consignees described in Supplement No. 3 to part 742 of the EAR are prohibited only from giving such nationals user-accessible programmability.

(3) Computers eligible for License Exception CTP may not be reexported or retransferred without prior authorization from BXA, i.e., a license, a permissive reexport, another License Exception, or "No License Required". This restriction must be conveyed to the consignee, via the Destination Control Statement, see §758.6 of the EAR. Additionally, the end-use and end-user restrictions in paragraph (d)(3) of this section must be conveyed to any consignee in Computer Tier 3.

(4) You may not use this License Exception to export or reexport items that you know will be used to enhance the CTP beyond the eligibility limit allowed to your country of destination.

(c) Computer Tier 1. (1) Eligible countries. The countries that are eligible to receive exports under this License Exception include Antigua and Barbuda, Argentina, Australia, Austria, Bahamas, Barbados, Bangladesh, Belgium, Belize, Benin, Bhutan, Bolivia, Botswana, Brazil, Brunei, Burkina Faso, Burma, Burundi, Cameroon, Cape Verde, Central African Republic, Chad, Czech Republic, Chile, Colombia, Congo, Costa Rica, Cote d'Ivoire, Cyprus, Denmark, Dominica, Dominican Republic, Ecuador, El Salvador, Equatorial Guinea, Eritrea, Estonia, Ethiopia, Fiji, Gabon, Finland, France, Gambia (The), Germany, Ghana, Greece, Grenada, Guatemala, Guinea, Guinea-Bissau, Guyana, Haiti, Honduras, Hong Kong, Hungary, Iceland, Indonesia, Ireland, Italy, Jamaica, Japan, Kenya, Kiribati, Korea (Republic of), Lesotho, Liberia, Liechtenstein, Lithuania, Luxembourg, Madagascar, Malawi, Malaysia, Maldives, Mali, Malta, Marshall Islands, Mauritius, Mexico, Micronesia (Federated States of), Monaco, Mozambique, Namibia, Nauru, Nepal, Netherlands, New Zealand, Nicaragua, Niger, Nigeria, Norway, Palau, Panama, Papua New Guinea, Paraguay, Peru, Philippines, Poland, Portugal, Romania, Rwanda, St. Kitts & Nevis, St. Lucia, St. Vincent and Grenadines, Sao Tome & Principe, San Marino, Senegal, Seychelles, Sierra Leone, Singapore, Slovakia, Slovenia, Solomon Islands, Somalia, South Africa, Spain, Sri Lanka, Surinam, Swaziland, Sweden, Switzerland, Taiwan, Tanzania, Togo, Tonga, Thailand, Trinidad and Tobago, Turkey, Tuvalu, Uganda, United Kingdom,

Uruguay, Vatican City, Venezuela, Western Sahara, Western Samoa, Zaire, Zambia, and Zimbabwe.

(2) Eligible commodities. All computers, including electronic assemblies and specially designed components therefor are eligible for License Exception CTP to Tier 1 destinations, subject to the restrictions in paragraph (b) of this section.

(d) Computer Tier 3. (1) Eligible countries. The countries that are eligible to receive exports and reexports under this License Exception are Afghanistan, Albania, Algeria, Andorra, Angola, Armenia, Azerbaijan, Bahrain, Belarus, Bosnia & Herzegovina, Bulgaria, Cambodia, China (People's Republic of), Comoros, Croatia, Djibouti, Egypt, Georgia, India, Israel, Jordan, Kazakhstan, Kuwait, Kyrgyzstan, Laos, Latvia, Lebanon, Macau, Macedonia (The Former Yugoslav Republic of), Mauritania, Moldova, Mongolia, Morocco, Oman, Pakistan, Qatar, Russia, Saudi Arabia, Tajikistan, Tunisia, Turkmenistan, Ukraine, United Arab Emirates, Uzbekistan, Vanuatu, Vietnam, Yemen, and Federal Republic of Yugoslavia (Serbia and Montenegro).

(2) Eligible commodities. All computers, including electronic assemblies and specially designed components therefor having a CTP less than or equal to 85,000 MTOPS are eligible for License Exception CTP to Tier 3 destinations, subject to the restrictions in paragraphs (b) and (d)(3) of this section.

(3) Eligible exports. Only exports and reexports to permitted end-users and end-uses located in countries in Computer Tier 3. License Exception CTP does not authorize exports and reexports to Computer Tier 3 for nuclear, chemical, biological, or missile end-users and end-uses subject to license requirements under §744.2, §744.3, §744.4, and §744.5 of the EAR. Such exports and reexports will continue to require a license and will be considered on a case-by-case basis. Retransfers to these end-users and end-uses in eligible countries are strictly prohibited without prior authorization.

(e) Reporting requirements. See §743.1 of the EAR for reporting requirements of certain items under License Exception CTP.

§740.11 Governments, international organizations, and international inspections under the Chemical Weapons Convention (GOV).

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(c) * * *

(2) * * *

(i) Computers with a Composite Theoretical Performance (CTP) greater than 85,000 MTOPS. In addition, computers eligible for this provision of License Exception GOV

may not be accessed either physically or computationally by nationals of Cuba, Iran, Iraq, Libya, North Korea, Sudan, or Syria. No MTOPS limit applies to exports or reexports to countries in Tier 1 (see §740.7(b)(1) of the EAR).

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§740.16 Additional Permissive Reexports (APR).

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(b) Reexports to and among Country Group A:1 and cooperating countries. Reexports may be made to and among Country Group A:1 and cooperating countries, provided that eligible commodities are for use or consumption within a Country Group A:1 (see Supplement No. 1 to part 740) or cooperating country, or for reexport from such country in accordance with other provisions of the EAR. All commodities are eligible except those controlled for nuclear nonproliferation reasons or missile technology reasons.

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PART 742 - [AMENDED]

10. Section 742.12 is amended by:

- (a) Revising paragraph (a)(1);
- (b) Revising paragraph (a)(3);
- (c) Removing paragraph (b)(3)(i)(C);
- (d) Adding a note to paragraph (b)(3)(i);
- (e) Revising the phrase “computers having a CTP greater than 6,500 MTOPS destined to” to read “high performance computers destined to” in paragraph (b)(3)(iii);
- (f) Revising paragraphs (b)(3)(iv)(A); and
- (g) Adding a note to paragraph (b)(3)(iv)(B), to read as follows:

742.12 High Performance Computers.

(a) **License and recordkeeping requirements.** (1) This section contains special provisions for exports, reexports, and certain intra-country transfers of high performance computers, including software, and technology. This section affects the following ECCNs: 4A001; 4A002; 4A003; 4D001; 4D002; and 4E001. Licenses are required under this section for ECCN's having an "XP" under "Reason for Control", unless a License Exception is available (see part 740 of the EAR). Post-shipment verification reporting or Wassenaar reporting may be required when exporting or reexporting “XP” items under the authorization of a License Exception (See 743.1 of the EAR for Wassenaar reporting requirements and paragraph (b)(3)(iv) of this section for post-shipment verification requirements). License requirements reflected in this section are based on particular destinations, end-users, or end-uses. For the calculation of CTP, see the

Technical Note that follows the list of ECCNs for Category 4 in the Commerce Control List. Note that License Exception CTP contains restrictions on access by nationals of certain countries, and on reexports and transfers of computers.

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(3) Exporters must keep accurate records of each export to non-Wassenaar member countries (see Supplement No. 1 to part 743 of the EAR) of a computer with a CTP greater than 75,000 MTOPS. These records must be submitted semiannually to BXA and must contain the information as described in §743.1 of the EAR.

(b) Licensing policy. * * *

(3) Computer Tier 3. * * *

(i) * * *

NOTE TO PARAGRAPH (b)(3)(i) OF THIS SECTION: Exporters are required to obtain a People's Republic of China (PRC) End-User Certificate before exporting computers described by paragraph (b)(3)(i) of this section to the PRC, regardless of value. (See §748.10(c)(3) of the EAR for information on obtaining the PRC End-User Certificate.)

(iv) Post-shipment verification. * * *

(A) Exporters must file post-shipment reports for high performance computer exports, as well as exports of items used to enhance previously exported or reexported computers, where the CTP is greater than 85,000 MTOPS.

* * * * *

(B) * * *

NOTE TO PARAGRAPH (b)(3)(iv)(B) OF THIS SECTION: Exporters are required to provide the PRC End-User Certificate Number to BXA as part of their post-shipment report (see paragraph (b)(3)(iv) of this section). When providing the PRC End-User Certificate Number to BXA, you must identify the transaction in the post shipment report to which that PRC End-User Certificate Number applies.

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PART 743 - [AMENDED]

11. Section 743.1 is amended by revising paragraph (c)(2), the note to paragraph (c)(2) and by adding paragraph (e)(2) to read as follows:

§743.1 Wassenaar Arrangement.

* * * * *

(c) Items for which reports are required. * * *

(2) Reports for “digital computers” and “electronic assemblies” controlled under ECCN 4A003.b and .c are required only for computers with a composite theoretical performance (CTP) exceeding 75,000 MTOPS or computer enhancements thereof such that the CTP of the aggregation exceeds 75,000 MTOPS. Records for software controlled by 4D001 are required for software specially designed for the development or production of computers having a CTP exceeding 75,000 MTOPS. For the calculation of CTP, see the Technical Note for Category 4 in the Commerce Control List (Supplement No. 2 to part 774 of the EAR).

NOTE TO PARAGRAPH (c)(2): Reports for exports to Computer Tier 3 destinations (see §740.7(d)(1) of the EAR) of computers having a CTP level of greater than 85,000 MTOPS, should be reported under the post shipment verification reporting provisions of §742.12 of the

EAR and need not be reported under the Wassenaar reporting provisions in this section of the EAR.

* * * * *

(e) * * *

(2) Reports for “digital computers” and “electronic assemblies” controlled under ECCN 4A003.b and .c must include the CTP of each computer or aggregation of computing elements in shipment.

PART 748 - [AMENDED]

12. Section 748.10 is amended by revising paragraph (b)(3) to read as follows:

§748.10 Import and End-User Certificates.

* * * * *

(b) * * *

(3) Your transaction involves an export to the People's Republic of China (PRC) of a computer, regardless of dollar value, that requires a license application.

* * * * *

PART 774 - [AMENDED]

13. In Supplement No. 1 to part 774 (the Commerce Control List), Category 4 - Computers is amended by revising Export Control Classification Number (ECCN) 4A003; "License Requirements" and "List of Items Controlled" sections of ECCN 4A001; and the "License Requirements" section of ECCNs of 4A002, 4D001, 4D002, and 4E001 to read as follows:

4A001 Electronic computers and related equipment, and "electronic assemblies" and specially designed components therefor.

License Requirements

Reason for Control: NS, MT, AT, NP, XP

<u>Control(s)</u>	<u>Country Chart</u>
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NS applies to entire entry	NS Column 2
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MT applies to items in 4A001.a when the parameters in 4A101 are met or exceeded	MT Column 1
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AT applies to entire entry	AT Column 1
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NP applies, unless a License Exception is available. See §742.3(b) of the EAR for information on applicable licensing review policies.

XP applies to electronic computers with a CTP greater than 28,000 MTOPS, unless a License Exception is available. XP controls vary according to destination and end-user and end-use; however, XP does not apply to Canada. See §742.12 of the EAR for additional information.

License Requirement Notes: See §743.1 of the EAR for reporting requirements for exports under License Exceptions.

* * * * *

List of Items Controlled

Unit: Equipment in number; parts and accessories in \$ value

Related Controls: See also 4A101 and 4A994. Equipment designed or rated for transient ionizing radiation is subject to the export licensing authority of the U.S. Department of State, Office of Defense Trade Controls. (See 22 CFR part 121.)

Related Definitions: For the purposes of integrated circuits in 4A001.a.2, $5 \times 10^3 \text{ Gy(Si)}$ = $5 \times 10^5 \text{ Rads (Si)}$; $5 \times 10^6 \text{ Gy (Si)/s}$ = $5 \times 10^8 \text{ Rads (Si)/s}$.

Items:

- a. Specially designed to have either of the following characteristics:
 - a.1. Rated for operation at an ambient temperature below 228 K (-45°C) or above 358 K (85°C);
 - Note:** 4A001.a.1. does not apply to computers specially designed for civil automobile or railway train applications.
 - a.2. Radiation hardened to exceed any of the following specifications:
 - a.2.a. A total dose of $5 \times 10^3 \text{ Gy (Si)}$;
 - a.2.b. A dose rate upset of $5 \times 10^6 \text{ Gy (Si)/s}$; or
 - a.2.c. Single Event Upset of $1 \times 10^{-7} \text{ Error/bit/day}$;
- b. Having characteristics or performing functions exceeding the limits in Category 5, Part 2 ("Information Security").

4A002 "Hybrid computers" and "electronic assemblies" and specially designed components therefor.

License Requirements

Reason for Control: NS, MT, AT, NP, XP

<u>Control(s)</u>	<u>Country Chart</u>
NS applies to entire entry	NS Column 2
MT applies to hybrid computers combined with specially designed "software", for modeling, simulation, or design integration of complete rocket systems and unmanned air vehicle systems	MT Column 1

that are usable in systems
controlled for MT reasons

AT applies to entire entry

AT Column 1

NP applies, unless a License Exception is available. See §742.3(b) of the EAR for information on applicable licensing review policies.

XP applies to hybrid computers with a CTP greater than 28,000 MTOPS, unless a License Exception is available. XP controls vary according to destination and end-user and end-use; however, XP does not apply to Canada. See §742.12 of the EAR for additional information.

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4A003 "Digital computers", "electronic assemblies", and related equipment therefor, and specially designed components therefor.

License Requirements

Reason for Control: NS, MT, CC, AT, NP, XP

<u>Control(s)</u>	<u>Country Chart</u>
NS applies to 4A003.b and .c	NS Column 1
NS applies to 4A003.a, d, .e, and .g	NS Column 2
MT applies to digital computers used as ancillary equipment for test facilities and equipment that are controlled by 9B005 or 9B006.	MT Column 1
CC applies to digital computers for computerized finger-print equipment	CC Column 1
AT applies to entire entry (refer to 4A994 for controls on digital computers with a	AT Column 1

CTP ≥ 6 but \leq to 28,000 MTOPS)

NP applies, unless a License Exception is available. See §742.3(b) of the EAR for information on applicable licensing review policies.

XP applies to digital computers with a CTP greater than 28,000 MTOPS, unless a License Exception is available. XP controls vary according to destination and end-user and end-use; however, XP does not apply to Canada. See §742.12 of the EAR for additional information.

Note: For all destinations, except Cuba, Iran, Iraq, Libya, North Korea, Sudan, Syria, no license is required (NLR) for computers with a CTP not greater than 28,000 MTOPS and for “electronic assemblies” described in 4A003.c that are not capable of exceeding a CTP greater than 28,000 MTOPS in aggregation. Computers controlled in this entry for MT reasons are not eligible for NLR.

License Requirement Notes: See §743.1 of the EAR for reporting requirements for exports under License Exceptions.

License Exceptions

LVS: \$5000; N/A for MT, b. and .c.

GBS: Yes, for 4A003.d, .e, and .g and specially designed components therefor, exported separately or as part of a system.

CTP: Yes, for computers controlled by 4A003.a or .b, and “electronic assemblies” controlled by 4A003.c, to the exclusion of other technical parameters, with the exception of parameters specified as controlled for Missile Technology (MT) concerns and 4A003.e (equipment performing analog-to-digital or digital-to-analog conversions exceeding the limits of 3A001.a.5.a). See §740.7 of the EAR.

CIV: Yes, for .e, and .g.

List of Items Controlled

Unit: Equipment in number; parts and accessories in \$ value

Related Controls: See also 4A994 and 4A980

Related Definitions: N/A

Items:

Note 1: 4A003 includes the following:

- a. Vector processors;
- b. Array processors;
- c. Digital signal processors;

- d. Logic processors;
- e. Equipment designed for "image enhancement";
- f. Equipment designed for "signal processing".

Note 2: The control status of the "digital computers" and related equipment described in 4A003 is determined by the control status of other equipment or systems provided:

- a. The "digital computers" or related equipment are essential for the operation of the other equipment or systems;
- b. The "digital computers" or related equipment are not a "principal element" of the other equipment or systems; *and*

N.B. 1: The control status of "signal processing" or "image enhancement" equipment specially designed for other equipment with functions limited to those required for the other equipment is determined by the control status of the other equipment even if it exceeds the "principal element" criterion.

N.B. 2: For the control status of "digital computers" or related equipment for telecommunications equipment, see Category 5, Part 1 (Telecommunications).

- c. The "technology" for the "digital computers" and related equipment is determined by 4E.

- a. Designed or modified for "fault tolerance";

Note: For the purposes of 4A003.a., "digital computers" and related equipment are not considered to be designed or modified for "fault tolerance" if they utilize any of the following:

1. Error detection or correction algorithms in "main storage";
2. The interconnection of two "digital computers" so that, if the active central processing unit fails, an idling but mirroring central processing unit can continue the system's functioning;
3. The interconnection of two central processing units by data channels or by use of shared storage to permit one central processing unit to perform other work until the second central processing unit fails, at which time the first central processing unit takes over in order to continue the system's functioning; or

4. The synchronization of two central processing units by "software" so that one central processing unit recognizes when the other central processing unit fails and recovers tasks from the failing unit.

b. "Digital computers" having a "composite theoretical performance" ("CTP") exceeding 28,000 million theoretical operations per second (MTOPS);

c. "Electronic assemblies" specially designed or modified to be capable of enhancing performance by aggregation of "computing elements" ("CEs") so that the "CTP" of the aggregation exceeds the limit in 4A003.b.;

Note 1: 4A003.c applies only to "electronic assemblies" and programmable interconnections not exceeding the limit in 4A003.b. when shipped as unintegrated "electronic assemblies". It does not apply to "electronic assemblies" inherently limited by nature of their design for use as related equipment controlled by 4A003.d, or 4A003.e

Note 2: 4A003.c does not control "electronic assemblies" specially designed for a product or family of products whose maximum configuration does not exceed the limit of 4A003.b.

d. Graphics accelerators and graphics coprocessors exceeding a "three dimensional Vector Rate" of 200,000,000;

e. Equipment performing analog-to-digital conversions exceeding the limits in 3A001.a.5;

f. Reserved.

g. Equipment specially designed to provide external interconnection of "digital computers" or associated equipment that allows communications at data rates exceeding 1.25 Gbyte/s.

Note: 4A003.g does not control internal interconnection equipment (*e.g.*, backplanes, buses) passive interconnection equipment, "network access controllers" or "communication channel controllers".

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4D001 "Software" specially designed or modified for the "development", "production" or "use" of equipment or "software" controlled by 4A001 to 4A004, or 4D (except 4D980, 4D993 or 4D994).

License Requirements

Reason for Control: NS, MT, CC, AT, NP, XP

<u>Control(s)</u>	<u>Country Chart</u>
NS applies to "software" for commodities or software controlled by 4A001 to 4A004, 4D001 to 4D003	NS Column 1
MT applies to "software" for equipment controlled by 4A001 to 4A003 for MT reasons	MT Column 1
CC applies to "software" for computerized finger-print equipment controlled by 4A003 for CC reasons	CC Column 1
AT applies to entire entry	AT Column 1

NP applies, unless a License Exception is available. See §742.3(b) of the EAR for information on applicable licensing review policies.

XP applies to "software" for computers with a CTP greater than 28,000 MTOPS, unless a License Exception is available. XP controls vary according to destination and end-user and end-use; however, XP does not apply to Canada. See §742.12 of the EAR for additional information.

License Requirement Notes: See §743.1 of the EAR for reporting requirements for exports under License Exceptions.

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4D002 "Software" specially designed or modified to support "technology" controlled by 4E (except 4E980, 4E992, and 4E993).

License Requirements

Reason for Control: NS, MT, AT, NP, XP

<u>Control(s)</u>	<u>Country Chart</u>
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NS applies to entire entry NS Column 1

MT applies to "software"
for equipment controlled
by 4E for MT reasons MT Column 1

AT applies to entire entry AT Column 1

NP applies, unless a License Exception is available. See §742.3(b) of the EAR for information on applicable licensing review policies.

XP applies to "software" for computers with a CTP greater than 28,000 MTOPS, unless a License Exception is available. XP controls vary according to destination and end-user and end-use; however, XP does not apply to Canada. See §742.12 of the EAR for additional information.

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4E001 "Technology" according to the General Technology Note, for the "development", "production" or "use" of equipment or "software" controlled by 4A (except 4A980, 4A993 or 4A994) or 4D (except 4D980, 4D993, 4D994).

License Requirements

Reason for Control: NS, MT, CC, AT, NP, XP

<u>Control(s)</u>	<u>Country Chart</u>
NS applies to "technology" for commodities or software controlled by 4A001 to 4A004, 4D001 to 4D003	NS Column 1
MT applies to "technology" for items controlled by 4A001 to 4A003 4A101, 4D001, 4D102 or 4D002 for MT reasons	MT Column 1
CC applies to "technology" for computerized fingerprint equipment controlled by 4A003 for CC reasons	CC Column 1

AT applies to entire entry

AT Column 1

NP applies, unless a License Exception is available. See §742.3(b) of the EAR for information on applicable licensing review policies.

XP applies to “technology” for computers with a CTP greater than 28,000 MTOPS, unless a License Exception is available. XP controls vary according to destination and end-user and end-use, however, XP does not apply to Canada. See §742.12 of the EAR for additional information.

License Requirement Notes: See §743.1 of the EAR for reporting requirements for exports under License Exceptions.

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Dated:

James J. Jochum
Assistant Secretary for
Export Administration